Remarks

Claims 1-12 are at issue. Claims 1-12 are subject to a restriction requirement. The application selects, with outraged traverse, species A, which covers claims 1-3, & 5-12.

The applicant wishes to express his thanks to the Examiner for his tolerance and helpful comments in our telephone conversation. A number of the comments below are repetitive of those discussed in the telephone conversation.

Traverse

This restriction is inappropriate in at least three ways. One, the restriction happened after an Appeal had been filed. Two, after an Appeal has been filed the first Office Action should have given the applicant the right to reinstate the Appeal. Three, the restriction is inappropriate under the law. Last these so-called species elections are a waste PTO resources and the applicant's resources.

1) If a restriction was appropriate it should have happened before the first substantive Office Action. It clearly should not be raised after reopening prosecution after an Appeal. The restriction should be withdrawn.

2) After an Appeal has been reopened for prosecution, the applicant should have been given the option to reinstate the Appeal. This is the option the applicant would have selected. The restriction should be withdrawn.

3) Under the law, 35 USC 121, a restriction may be made if:

> If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.

The regulations have essentially the same language. A heated pet bed made with acrylonitrile butadiene styrene plastic is just another embodiment of a heated pet bed made with polyvinyl chloride. These are clearly NOT two independent and distinct inventions. The restriction must be withdrawn as failing to compile with the law.

4) The justification for restrictions is that it is unfair for the PTO to have to search and examine multiple inventions in a single application. To require the PTO to search and examine multiple inventions in a single application places an undue burden on the PTO. In this case, and must so-called species elections, there is no additional effort in searching both embodiments and there is no extra burden on the PTO to examine both sets of claims. However, it is a waste of PTO resources and the applicant's resources to respond to these illegal restrictions. If the PTO is serious about using its resources efficiently it will immediately cease this wasteful and illegal effort.

Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

(Koskey)

By /dbh/.

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